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## Record of Decision for the Greybull Valley Dam and Reservoir Environmental Impact Statement

United States Department of the Interior, Bureau of Land Management

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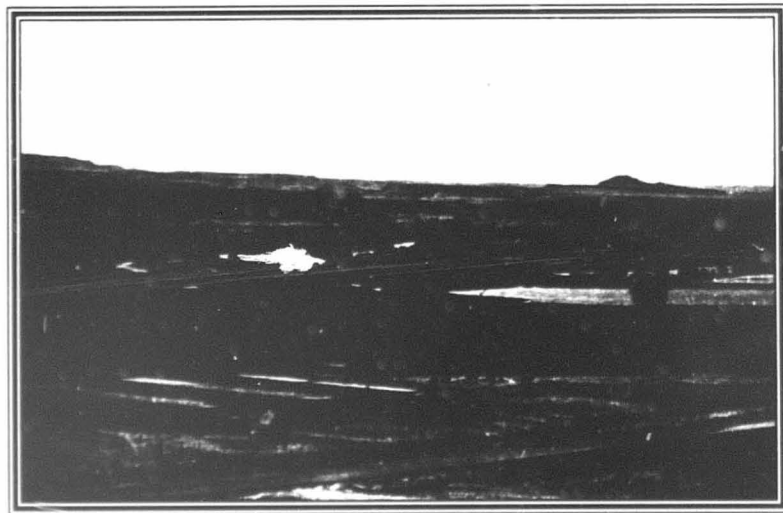


U.S. Department of the Interior  
Bureau of Land Management  
Worldwide District Office

Bighorn Basin Resource Area

February 1998

## RECORD OF DECISION for the Greybull Valley Dam and Reservoir Environmental Impact Statement



The Bureau of Land Management is responsible for the balanced management of the public lands and resources and their various values so that they are considered in a combination that will best serve the needs of the American people. Management is based upon the principles of multiple use and sustained yield; a combination of uses that take into account the long term needs of future generations for renewable and nonrenewable resources. These resources include recreation, range, timber, minerals, watershed, fish and wildlife, wilderness and natural, scenic, scientific and cultural values.

BLM/WY/PL-98/007+1010

98-035965

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Wyoming State Office  
P.O. Box 1828  
Cheyenne, Wyoming 82003-1828

February 5, 1998

Dear Interested Party:

Attached is the Record of Decision of the Wyoming State Director of the Bureau of Land Management (BLM) to grant a right-of-way (ROW) on BLM-administered lands public lands to the Greybull Valley Irrigation District.

This decision states BLM's intent to grant a ROW only, for the construction of a dam and reservoir, described in the Greybull Valley Dam and Reservoir Draft and Final Environmental Impact Statements. The proposed dam would be built in an unnamed drainage west of Roach Gulch, inundating about 700 acres of BLM-administered public land. This decision does not authorize construction to begin and does not affect any State or private lands which may be involved in the project, and does not create any right or easement, nor establish eminent domain, across such lands.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 which can be attained at any BLM office. Appeal procedures are outlined on page 7 of the Record of Decision.

We appreciate your participation in this planning effort and look forward to your continued involvement.

Sincerely,

Alan L. Kesterke  
Wyoming Associate State Director

Enclosure

II

RECORD OF DECISION

for the

GREYBULL VALLEY IRRIGATION DISTRICT  
RESERVOIR AND DAM PROJECT

Right-of-Way Case File No. WYW-131027

U.S. Department of the Interior  
Bureau of Land Management  
Worland District Office

Prepared by  
United States Department of the Interior  
Bureau of Land Management  
Worland District  
Worland, Wyoming

  
\_\_\_\_\_  
Wyoming Associate State Director  
Bureau of Land Management

2/5/98  
Date

III

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## RECORD OF DECISION for the GREYBULL VALLEY IRRIGATION DISTRICT DAM AND RESERVOIR PROJECT

This document records the decision made by the Wyoming State Director of the Bureau of Land Management (BLM) to grant a right-of-way under the authority of Section 5 of the Federal Land Policy and Management Act of 1976 (FLPMA), across BLM-administered lands (public lands) to the Greybull Valley Irrigation District, for the construction of a dam and reservoir project, as described in the Greybull Valley Dam and Reservoir Draft and Final Environmental Impact Statements.

### 1. Decision

It is my decision to grant a right-of-way (ROW) and a temporary use permit across public lands to the Greybull Valley Irrigation District (GVID) for the construction, operation, and maintenance of a dam and reservoir in an unnamed drainage west of Roach Gulch, in Park County, Wyoming. The BLM's selected alternative is Alternative B, Lower Roach Gulch, as modified by that mitigation described in Chapter 5 of the DEIS which is applicable to construction, reclamation, and operation of the project on public lands. This decision includes changes made in the final environmental impact statement (FEIS).

This decision does not affect any State or private lands which may be involved in the project, and does not create any right or easement, nor establish eminent domain, across such lands. The land descriptions of the public land applied for under Application WYW-131027 is in Appendix 1 of this document.

This decision states our intent to grant a ROW only. It does not authorize construction to begin. Construction on public lands may not begin until a Notice to Proceed is issued by the BLM. Issuance of the Notice to Proceed will be contingent upon:

- completion of the Section 106 consultation process with the State Historic Preservation Officer; and,
- submission of an acceptable Plan of Development (POD), per 43 CFR 2882.3(m).

This decision identifies the "No Action" alternative as the "Environmentally Preferred" alternative.

The co-lead Federal agency, the U.S. Army Corps of Engineers (Corps), will issue a separate record of decision regarding issuance of a permit, under Section 404 of the Clean Water Act, to allow GVID to conduct operations in the Greybull River.

### Connected Actions

This decision to grant a ROW may trigger additional decisions and management actions if the project is built. For example, it is likely that it will be necessary to adjust grazing use in the affected allotments. A withdrawal from location under the general mining laws in the area of the new reservoir may be pursued. The BLM may also initiate access improvements or the construction of recreational facilities if public use warrants. Finally, I recognize that water from the reservoir could be used in support of future Desert Land Entry applications.

### 2. Alternatives

Three alternatives were analyzed in detail in the DEIS and FEIS:

#### Alternative A—No Action

The BLM would not grant a ROW in support of the proposed project.



## Alternative B (Proposed Action)—Lower Roach Gulch

A dam would be built in an unnamed drainage west of Roach Gulch, inundating about 700 acres of public land.

## Alternative C—Blackstone Gulch.

A dam would be built in Blackstone Gulch. This alternative would also cause the inundation of about 700 acres of public land. A 1-mile, concrete-lined, 13-foot-diameter tunnel would be required as part of the diversion system.

Sixteen alternatives were developed early in the GVID's state application process, which began prior to the federal National Environmental Policy Act (NEPA) process. The agencies reviewed all associated technical, evaluation, and screening reports to arrive at the three alternatives analyzed in the EIS. This screening is described at pages 2-1 through 2-10 of the DEIS.

## 3. Rationale for the Decision

I have determined that the DEIS and the FEIS adequately disclose the impacts to the human environment of the Proposed Action and the Alternatives Considered in Detail, and provide a sound basis for my decision. I have further determined that all practicable means to avoid or minimize environmental harm have been adopted. I also find that construction, operation, and maintenance of the dam and reservoir would not cause unnecessary and undue degradation of the public lands, nor would it be contrary to the public interest. The applicant is qualified to hold a right-of-way, and has demonstrated the technical and financial capacity to construct the project. No conflicts with any other law or regulation were identified (assuming successful completion of the Section 404 and Section 106 permitting processes, upon which the issuance of a Notice to Proceed is contingent.)

Under the applicable land use plan, the Grass Creek Management Framework Plan, the lands to be occupied by the proposed reservoir and delivery canal are open to right-of-way grant. The governing regulations (43 CFR 2800.0-2), establish that such grants, to a qualified business or governmental agency, are both an appropriate use of the public lands and an objective of the Secretary of Interior, provided that the right-of-way is managed so as to protect other resources and to avoid unnecessary or undue environmental damage. Upon review of the draft and final EISs, I could identify no severe or unmitigatable impacts or conflicts. No alternative was identified which would cause substantially less impact, while still meeting project purpose and need.

## 4. Mitigation and Monitoring

In this decision, the action proposed by GVID is modified by the mitigation measures found in Chapter 5 of the DEIS and summarized at pages 2-16 and 2-17. For activities which will occur on public lands, these would include:

- Water spreaders and other erosion control methods will be used on all disturbed areas to control both fugitive dust and the transport of sediment to the Greybull River.
- Topsoil will be stripped and stockpiled for reclamation, in disturbed areas not under the high-water line of the reservoir.
- Access roads which are to be reclaimed will be deep-ripped prior to topsoil replacement.
- Disturbed areas will be returned to their approximate original contour at reclamation.
- Disturbed areas will be reseeded with a mix of native species. A representative seed mix is shown on page 5-15 of the DEIS (modified in the FEIS in response to

a comment). This mix may be varied slightly for specific sites. Shrub seed will be included if appropriate.

- A survey for raptor nests will be conducted in the project area prior to construction. Construction will not occur within one-half mile of active raptor nests during the nesting season.
- Surveys will be conducted for archaeological and paleontological resources based on the results of these surveys, additional testing and recovery may be required.
- Natural colors will be used for painting facilities.

For the public lands involved, site-specific provisions implementing these mitigating measures will be found in the plan of development (POD). This document is currently in preparation. No "Notice to Proceed" with construction on public lands will be issued until an acceptable POD has been submitted to, and approved by, the BLM. The POD will also include contingency planning for fires, spills, and hazardous materials.

Surface compliance specialists from the BLM, along with other specialists as necessary, will monitor all phases of construction, reclamation, and operation on public lands for compliance with the terms of the approved POD.

Other mitigation measures are described in Chapter 5 of the DEIS which would address impacts to wetlands, water quality, and aquatic resources. The measures could be included in the Corps' decision whether or not to issue a permit for the project under Section 404 of the CWA.

## 5. Public Involvement

A Notice of Intent to Prepare an EIS was published in the *Federal Register* on September 22, 1994. Scoping was

conducted in October, 1994; the public scoping meeting was held October 26, 1994 in Emblem, Wyoming. The Notice of Availability of the DEIS was published in the *Federal Register* on January 17, 1997. More than 350 copies of the DEIS were distributed. The public comment meeting on the DEIS was held January 29, 1997 in Emblem. The DEIS comment period was 60 days. The FEIS Notice of Availability appeared in the *Federal Register* on September 19, 1997. The FEIS comment period was 30 days (although comments received after 30 days, but prior to preparation of this ROD, are responded to below). Approximately 400 copies of the FEIS were distributed.

Press releases were distributed announcing the scoping meeting, the DEIS release and comment meeting, and the release of the FEIS. Each of these resulted in articles appearing in newspapers of local, statewide, and regional circulation, including newspapers in Worland, Basin, Greybull, Powell, Cody, and Casper, Wyoming and Billings, Montana.

## 6. Response to Comments on the Final EIS

Six letters were received commenting on the FEIS. These commentors were:

No	Name or Organization
1	CY Dopp City Electric
2	David H. Haire
3	Board of Co. Commissioners, Park Co.
4	David H. Haire
5	U.S. Environmental Protection Agency, Region VIII
6	State of Wyoming, Office of the Governor (Transmitting the comments of various state agencies.)

In the responses that follow, the numbers in parentheses identify the commentor from the above list.

## Requests for an extension of the FEIS comment period.

### Comments

Two letters (2, 4) requested a 30-day extension of the comment period.

### Response:

Based on the level of response to the FEIS and the nature of the comments received, I do not consider an extension warranted.

## Requests for general information

### Comment

One letter (1) asked the project location.

### Response

The selected alternative is located in T. 51 N., R. 96 W., in Park County, Wyoming; approximately 10 miles southwest of the town of Burlington.

## Issues related to the NEPA process.

### Comments

Two letters (2, 4) expressed the opinion that public involvement opportunities had been inadequate. In particular, these comments suggested that Park County residents had been denied opportunity to comment, because none of the public meetings was held in Park County, and because distribution copies of the DEIS were not available in the BLM's Cody Resource Area Office.

### Response

It is correct that while the project is located approximately 1 mile west of the Park County—Big Horn County line, the public meetings were held in Emblem, which is about 9 miles east of the county line. However, I do not feel that this unduly limited the ability of residents in Park County to provide input. Neither NEPA nor the Council on Environmental Quality (CEQ) regulations require that public meetings be held in

the same county as the project. The Emblem site was chosen because it is among the closest available facilities to the project, and because it is centrally located among the affected communities (communities in Big Horn County could be affected by the project as well.) Notice of the meetings was provided in newspapers serving Park County communities, as well as papers of communitywide, basinwide, and statewide circulation.

Because the project is located south of the Greybull River, it falls within the jurisdiction of our Bighorn Basin Resource Area office, located in Worland. Although copies of the DEIS and FEIS were available for review in our Cody office (as well as in public libraries in Park County), it was not the office of record nor the distribution point for copies. The articles which appeared in the local newspapers indicated where copies could be requested; we generally enjoy one-day mail service from Worland to Park County addresses.

### Comment

One commentator (5) did not feel it appropriate to defer discussion of site-specific mitigation until the POD is prepared, and stated, "Mitigation in the DEIS still needs to be at the same level of detail as the project description."

### Response

I agree that mitigation needs to be discussed in the DEIS at the same level of detail as the project description, that is to say, somewhat generalized at the EIS level. I feel that the discussion in Chapter 5 provides sufficient information to support my determination that the project would not cause unnecessary and undue degradation to the public lands. While, theoretically, it would be advantageous to have a complete POD for each action alternative considered, I do not feel that I can reasonably require the project proponent to incur the considerable expense of preparation of

multiple PODs for a project of this magnitude, when only one would be implemented.

### Comment

One comment (5) felt that the Agreement between Wyoming Game and Fish Department and GVID should not be considered "mitigation", since no Federal agency is party to the agreement. This commentator also asks, in relation to the agreement, "...what is meant by allowing public access to the high water line? Does that mean there would be no access when the reservoir is partially drawn down?"

### Response

I agree. See the response to comment 8 of letter 14 in the FEIS, and the FEIS Errata section below. The agreement is more properly considered a "connected action", and is correctly discussed in the Cumulative Impacts section of the FEIS, at page 2-15. I believe that its implementation will have a beneficial effect to the fisheries resource. However, it cannot be considered "mitigation" as the term is used in NEPA and the CEQ regulations. We believe that the "high water line" provision simply refers to conditions at the reservoir; that is, while access to the reservoir would not be denied when it is drawn down, it cannot be guaranteed, due to topography, and the fact that the facilities are designed to accommodate the high-water line. However, this question would be better directed to one of the parties to the agreement.

## Issues related to water quality

### Comments

Two letters (4, 6) stated that impacts, both adverse and beneficial, to Upper Sunshine Reservoir and the Greybull River upstream from the proposed diversion point had not been adequately analyzed. These commentators also felt that the State of Wyoming Game and Fish Department's previous comments

had been ignored. One of these (4) felt that mitigation for watershed impacts was inadequate.

### Response

The comments of Wyoming Game and Fish were responded to at pages 3-36 through 3-38 of the FEIS. While not all suggestions were adopted, the comments were not "ignored." I feel that the discussion of watershed impacts and mitigation is at an appropriate level to support my decision whether or not to grant a ROW in support of the proposed project.

### Comments

Two letters (4, 6) questioned the water quality data used in the EIS. Commentor 4 states, "...Table 4.1 in the FEIS provides contradictory evidence that the Project will have both a negative and a positive impact on water quality conditions of the Greybull River. For example, in Section" [sic]. Commentor 6 felt that the 5 ppb [parts-per-billion] detection limit used in the water quality analysis is too high, in light of information that waterfowl are at risk at levels as low as 2 ppb. This commentator also felt that the high levels of selenium present at the Blackstone Gulch alternative site needed further analysis. Finally, this letter questioned the conclusion that reservoir flushing would reduce selenium concentrations to acceptable levels and the conclusion that selenium would not accumulate in the reservoir.

### Response

There is apparently a portion missing from the first comment. The BLM does not consider the data presented in Table 4-1 to be contradictory. It indicates that impacts to some water quality parameters are expected to be beneficial while impacts to others could be adverse. The detection limit for selenium in the U.S. Geological Survey's "National Handbook of Recon-

mended Methods for Water-Data Acquisition" (1982) is 5 micrograms per liter (ug/l, equivalent to ppb.) The EPA's Water Quality Criteria for selenium are 35 ug/l for the 24-hour average concentration for freshwater aquatic life, and 10 ug/l for the Drinking Water Maximum Contaminant Level. Therefore, we feel that the 5 ppb detection limit was appropriate. The high selenium level at Blackstone Gulch was an important factor in our selection of the Roach Gulch alternative. The mitigation strategy of reservoir flushing may not completely eliminate selenium accumulation. However, I feel there is sufficient data to conclude that construction of the reservoir at the Roach Gulch location would not significantly exacerbate existing conditions in the Greybull River system, nor will it cause unacceptable increases in selenium concentrations.

#### Comments

Two letters (4, 5) expressed the opinion that the Greybull River is in a degraded state due to past management practices. Commentor 4 further stated that the Greybull could possibly be eligible for listing by the State of Wyoming Department of Environmental Quality as an impacted waterway. The commentor feels that this project's approval should have been tied to a watershed improvement plan, possibly under the authority of the Clean Water Act (CWA), and that the project plan should contain "mitigation measures designed to improve fisheries and/or water quality conditions in the watershed...." Such a proactive effort could preclude the need for listing as "impacted." Commentor alleges various noncompliances with the CWA.

#### Response

While I do not dispute that such a plan could be useful, BLM lacks the regulatory authority to order its preparation or implementation, nor can we make approval of this ROW

contingent on a plan. If the appropriate regulatory agency began preparation of a watershed improvement plan, BLM would participate to an extent consistent with its land management responsibilities. Regarding CWA compliance, BLM defers to the expertise of the co-lead agency, in their consideration of a permit under Section 404 of the CWA.

#### Comment

One letter (5) suggested the use of EPA 319 program funds, available through DEQ, to fund monitoring efforts on the impacts to water quality.

#### Response

It is my opinion that the DEQ's routine monitoring for compliance with state water quality standards will be adequate. However, we will inform the project proponent of the availability of such funding.

### Issues related to water rights

#### Comment

One letter (4) stated that the delivery canal had been designed to intercept flows from intermittent drainages along the route, and asked if the appropriate water rights had been obtained

#### Response

Water rights are administered by the State of Wyoming. The project proponent is responsible for all appropriate water rights filings with the state. The state, in comment letter 6, did not indicate any problems with regard to water rights.

### Issues related to socioeconomics

#### Comment

One letter (1) asked who the 88 jobs, as estimated in the DEIS, would affect.

#### Response

The majority of these jobs would be during the construction phase of the project and, therefore, short term. The source for this labor is entirely dependent on GVID's choice of contractors.

#### Comment

One letter (2) felt that the EIS is inadequate because it does not identify how many individual landowners would benefit, and felt generally that additional cost-benefit analysis is needed.

#### Response

Costs and benefits are discussed in the DEIS at 4-55 through 4-71; as amended in the FEIS, particularly at Appendix G. Both direct and indirect impacts are disclosed. It is clearly indicated that the primary direct beneficiaries will be certain members of the GVID, although the number of members benefitted will depend on how many buy shares in the water, which is entirely dependant on private contracts beyond the control of the BLM, and the individual decisions of each district member. (However, commentor is referred to the GVID Assessment Roll, which was published in the Cody Enterprise on November 5 and 12, 1997, and the Greybull Standard, on November 6 and 13, 1997.) I consider this discussion to be in sufficient detail to support my decision, given that no Federal funds are involved in the project. The BLM is making no decision as to whether or not the State of Wyoming should approve funding in support of the project.

#### Comment

One letter (3), while expressing general support for the project, expresses concerns over the effect of the project on Park County roads and bridges and the county's ability to provide emergency and law enforcement services.

#### Response

We share your concern, and will consult with Park County in the preparation of the POD regarding the use of roads and bridges. Also, page 2-1 of the FEIS notes that the project proponent is responsible for obtaining all necessary county permits, including a floodplain development permit, a land use certificate, and ROW access permits from Park County.

## 7. EIS Errata

Section 5.10.1 in the DEIS should be deleted in its entirety. (This section describes the WGFD/WWDC/GVID agreement as "mitigation" for the fisheries resource. The agreement is properly discussed in the FEIS, at page 3-15, as a connected action with potential cumulative effects.)

## 8. Appeals

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Wyoming State BLM Office, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003-1828 within 30 days of the date that notice of this decision is published in the Casper Star-Tribune. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 or 43 CFR 2884.1 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the

standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the Office of the Solicitor (see 43 CFR 4.413); Rocky Mountain Region; 755 Parfet Street, Suite 151; Lakewood, Colorado, 80215; at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### **Standards for Obtaining a Stay**

Except as otherwise provided by law or other pertinent regulation, a petition for a

stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) the relative harm to the parties if the stay is granted or denied;
- (2) the likelihood of the appellant's success on the merits;
- (3) the likelihood of immediate and irreparable harm if the stay is not granted; and
- (4) whether the public interest favors granting the stay.

## **APPENDIX 1**

### **Land Description**

The following is the land description (more or less) of the BLM-administered public lands affected by the Record of Decision for the Greybull Valley Irrigation District Dam and Reservoir Project. These lands are located in Park County, Wyoming.

Sixth Principal Meridian, Wyoming

T. 50 N., R. 98 W.

sec. 3: Lot 6;

S 1 / 2 N W 1 / 4 ,  
N 1 / 2 S W 1 / 4 ,  
SW1/4SW1/4;

sec. 4: Lots 5, 17, 18, 19;

S E 1 / 4 N E 1 / 4 ,  
N E 1 / 4 S E 1 / 4 ,  
S1/2SE1/4;

sec. 5: Lots 31, 32, 35;

Tract 39-Lot 38;

sec. 8: Lot 1;

SE1/4NW1/4;

sec. 10: N1/2.

T. 51 N., R. 98 W.

sec. 23: Lots 28, 29, 30;

S E 1 / 4 S W 1 / 4 ,  
SW1/4SE1/4;

sec. 26: W1/2, W1/2SE1/4;

sec. 27: E1/2;

sec. 34: E1/2, NW1/2,  
NW1/4SW1/4;

sec. 35: Lots 1, 4, 5, 8;

W1/2NE1/4, NW1/4,  
SW1/4, W1/2SE1/4.